

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION**

PANSEY HERRIN and OLLIE HERRIN,

Plaintiffs,

CASE NO: 05-10245

v.

DISTRICT JUDGE DAVID M. LAWSON
MAGISTRATE JUDGE CHARLES BINDER

TROOPER ROBERT DENHAM,
DET. MARK PENDERGRAFF,
MICHIGAN STATE POLICE, and
TUSCOLA COUNTY,

Defendants.

**MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
ON AMENDED MOTION FOR JUDGMENT ON THE PLEADINGS**

This Report and Recommendation is entered under the authority given
to this Magistrate Judge by an Order of Reference issued by District
Judge Lawson pursuant to 28 U.S.C. § 636(b)(1)(A).

I. RECOMMENDATION

IT IS RECOMMENDED that Plaintiffs' motion (Dkt. 27) be denied as moot.

II. HISTORY

The Plaintiffs filed this motion on November 5, 2007, as a result of the failure of Defendants Denham, Pendergraff and Michigan State Police (hereinafter referred to as "state defendants") to file a timely answer to the Complaint, once the initial dispositive motion had been resolved in Plaintiffs favor. On December 12, 2007, this Court granted the state Defendants' motion to file a late answer. (Dkt. 36). In so doing, the Court addressed the substantive issues raised in the instant motion. (*Id.*) Plaintiffs did not file any objections to that Order. The Court allowed Plaintiffs ten (10) days from the filing of the Order to amend or withdraw the instant motion so that Plaintiffs could either abandon or present any arguments that were not addressed

in the Order. (*Id.*) That deadline has long passed and Plaintiffs have taken no action. Therefore, I recommend that the motion be denied.

III. REVIEW

The parties to this action may object to and seek review of this Report and Recommendation within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed.2d 435 (1985); *Frontier Ins. Co. v. Blaty*, 454 F.3d 590, 596 (6th Cir. 2006); *United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005). The parties are advised that making some objections, but failing to raise others, will not preserve all the objections a party may have to this Report and Recommendation. *McClanahan v. Comm'r of Social Security*, 474 F.3d 830, 837 (6th Cir. 2006); *Frontier Ins. Co.*, 454 F.3d at 596-97. Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

s/ Charles E. Binder
CHARLES E. BINDER
United States Magistrate Judge

Dated: January 24, 2008

CERTIFICATION

I hereby certify that this Report and Recommendation was electronically filed this date, and electronically served on.

Dated: January 24, 2008

By s/Jean L. Broucek
Jean L. Broucek, Case Manager to
Magistrate Judge Binder